

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FIRST MAGNUS FINANCIAL
CORPORATION,

Plaintiff,

v.

ROBERT FOSTER, et al.,

Defendants.

No. 05-0169-CV-W-DW

ORDER

Before the Court is First Magnus Financial's Motion to Dismiss Defendant Greg DePriest (Doc. 100) and Defendant Greg DePriest's Motion for Summary Judgment (Doc. 98). In its motion, Plaintiff seeks to dismiss Greg DePriest *with prejudice* pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Defendant DePriest objects, requesting instead that the Court rule in his favor on his pending Motion for Summary Judgment. As a dismissal *with prejudice* operates as an adjudication on the merits and Defendant DePriest has pleaded no counterclaim against Plaintiff, the Court declines DePriest's request. Accordingly, the Court hereby ORDERS that:

- 1) Plaintiff's motion to dismiss (Doc. 100) is GRANTED and Defendant Greg DePriest is dismissed *with prejudice* from the above-caption action; and
- 2) Defendant Greg Priest's motion for summary judgment (Doc. 98) is DENIED as moot.

IT IS SO ORDERED.

Date: August 29, 2006

/s/ DEAN WHIPPLE
Dean Whipple
United States District Court